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DISTRICT COURT
WESTERN DISTRICT OF MICH

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES et al.,

File No. K87-138 CA

Plaintiffs,

Hon. Benjamin F. Gibson

v.

PRODUCTION PLATED PLASTICS,
INC., et al.,

OPINION

Defendants.

This is an environmental enforcement action brought pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928(a) and (g), and Section 18 of the Michigan Hazardous Waste Management Act ("MHWMA"), 1979 P.A. 64, as amended, Mich. Comp. Laws §§ 299.501 et seq. Plaintiffs United States of America et al. seek permanent injunctive relief and the imposition of civil penalties against the defendants Production Plated Plastics ("PPP"), Michigan City Plastics ("MCP"), and Michael J. Ladney ("Ladney").

The lawsuit has a lengthy procedural history. On May 14, 1990, this Court determined that defendants Ladney and PPP operated a hazardous waste facility and stored hazardous waste at an electroplating plant located at 9899 East D. Avenue, Richland, Michigan (the "Richland facility"), in violation of RCRA and MHWMA.¹ Defendants stipulated that MCP was jointly and severally liable for these violations as an owner and operator of

¹This Opinion is published at United States v. Production Plated Plastics Inc., 742 F. Supp. 956 (W.D. Mich. 1991).

the Richland facility. By opinion and order dated January 24, 1991, this Court determined that PPP, MCP, and Ladney were responsible for final closure of the Richland facility pursuant to the terms of a closure plan approved by the Michigan Department of Natural Resources ("MDNR").² Defendants were ordered to comply with the terms of the approved closure plan. That order was later revised to account for the submission by defendants and the approval by the MDEQ of an amended closure plan. Revised Order of Permanent Injunction, June 19, 1991. The January 24, 1991, Opinion and Order left four issues for resolution at trial:

1. Whether an injunction should issue against defendants requiring them to comply with the groundwater monitoring requirements of 40 C.F.R. Part 265 Subpart P;
2. Whether an injunction should issue against defendants requiring them to provide financial assurances for closure and postclosure in accordance with 40 C.F.R. §§ 265.143 and 265.145;
3. Whether an injunction should issue against defendants requiring them to comply with the financial responsibility (liability) requirements of 40 C.F.R. § 265.147; and
4. Whether, and in what amount, a civil penalty should be assessed against defendants pursuant to Title 42 United States Code Section 6920(g).

The first issue left for trial was resolved by the Court's Revised Order of Permanent Injunction which required defendants to undertake the groundwater monitoring required by both and

²This opinion is published at United States v. Productco, Plated Products Inc., 762 F. Supp. 722 (W.D. Mich. 1991), 955 F.2d 48 (6th Cir. 1992), publication for court, 216A, 60 U.S.L.W. 3829 (U.S. May 20, 1992) (No. 91-1869). 2

included in their amended closure plan. Another issue for trial arose, however, in that defendants have failed to comply with the Court's Revised Order of Permanent Injunction. Following a two-week bench trial on all remaining issues, the Court makes these findings of fact and conclusions of law in accordance with

Federal Rule of Civil Procedure 52(a).

I.

PPP and MCP are part of a group of companies referred to as the Detroit Plastics Molding or "DPM" Group. At one time, the DPM Group was the world's largest privately owned plastic molding injection company. The DPM Group was incorporated by Ladney in 1963. From that time until the majority of the DPM Group was sold in 1989, Ladney controlled the group of companies as a single corporate entity. He was the majority shareholder of all the group's affiliated companies and he managed their affairs out of a central headquarters. Ladney selected all of the directors and officers for DPM Group companies. The DPM Group provided accounting, financial planning, computer support, payroll, engineering, and sales services to all of the companies under its umbrella. In addition, Ladney's personal assets as well as the assets of the various corporations within the DPM Group were commingled. Assets within the group were channelled wherever they were needed without regard to the corporate form. For financing purposes the DPM Group's creditors treated the companies and Ladney as a single entity, with corporate and

personal assets serving as collateral for loans secured by the DPM Group.³

In 1969, the DPM Group acquired the Richland facility from Amerace Corporation.⁴ PPP was formed as a new corporate entity engaged in the business of electroplating plastic parts, mainly for the automotive market. In 1982, the DPM Group purchased MCP and made PPP a subsidiary of that company. PPP operated the Richland facility from 1969 until 1989, at which time it closed for lack of business. In 1989, the bulk of the DPM Group of companies was sold for between \$28 and \$33 million.

As part of its electroplating process, PPP operated two seepage lagoons, or surface impoundments, into which it discharged treated sludge and process water from the electroplating process. The lagoons were designed to allow water to seep directly into the upper groundwater aquifer underneath the Richland facility. Chrome, nickel, and copper precipitated out of the water and formed a sludge which is harmful to humans and the environment.⁵ The lagoons were operated pursuant to a

³At one point during the course of this litigation, defendants argued that the DPM companies were all alter egos of one another. See Defendants' January 2, 1991, Brief in Opposition to Marguerite Ladney's Motion to Dismiss at 4.

⁴Defendants have filed a complaint against Amerace Corporation seeking contribution for the costs associated with the present action.

⁵Electroplating sludge is a "listed R006" waste under RCRA. 40 C.F.R. § 261.31. That means the sludge is considered to be ~~per se~~ hazardous waste. 40 C.F.R. § 261.30. Electroplating sludge from the Richland facility also qualifies as a "characteristic" waste under the RCRA regulations. In other words, the waste is of such a high EP toxicity level that it has

discharge permit issued by the MDNR. On numerous occasions during its operation, PPP exceeded the allowable limits for the discharge of nickel and chrome permitted under its discharge permit. In 1974, the larger of the two lagoons became choked with sludge. Pursuant to MDNR direction, PPP removed the excess sludge and buried it on its property at the Richland facility.

In 1977, excessive amounts of hexavalent chromium were discovered in the groundwater of the upper aquifer underlying the Richland facility. Chromium is a human carcinogen. It can cause liver and kidney damage in humans. Other symptoms of chromium toxicity include internal bleeding, skin irritation and dermatitis, and respiratory distress. The most toxic form of chromium is hexavalent chromium. It is a danger to both human beings and the environment.

When the hexavalent chromium was discovered, the State of Michigan sued PPP in state court and in August of 1978 the parties entered into a consent judgment. Pursuant to the consent judgment, PPP provided clean drinking water wells for six residences affected by the contaminated plume of water. PPP agreed to remove the sludge from the lagoons at the rate of 120 cubic yards of sludge per month. In addition, PPP agreed not to place any more sludge in the lagoons. Accordingly, after August of 1978, only process water was placed in the impoundments. Nevertheless, chrome and nickel continued to precipitate out of

the characteristics of a hazardous waste. See 40 C.F.R.
§ 260.22.

6

like chromium, nickel is a hazardous material that can cause harm to the river and streams. It is known both to human and the environment.

source of the contamination in the aquifer. Accidental spills in sewage lagoons and buried sludge on the sites are a significant lagoons and the affected aquifer. The contamination between the lagoons and the affected aquifer. The contamination in the aquifer is a direct hydrologic connection between the sewage

to 1,660 ppm from March 1980 to January 1984.

well showed levels of nickel contamination ranging from 170 ppm hexavalent chromium levels ranging from 53 ppm to 2,350 ppm from May 1980 to June 1983. Groundwater data from the same monitoring the Richland facility's lagoons and buried sludge piles shows contaminated wells. Groundwater data from a monitoring well near chromium and nickel exceeding 100 parts per billion (ppm) are safety levels prescribed by the U.S. EPA. Concentrations of hexavalent chromium and nickel in concentrations exceeding the benzene or DPP evidence a contaminated plume of groundwater originating at the Richland facility. The plume contains both numerous monitoring wells were drilled and a consultant was retained to prepare and submit quarterly groundwater monitoring reports on behalf of DPP. The groundwater reports prepared on conduct a hydrogeological study of the affected aquifer.

Also by the terms of the consent judgment, DPP undertook to achieve. Also by the terms of the consent judgment, DPP continued to operate the lagoons until late 1987 when sewer hookups were achieved.

the process water in the lagoons and form sludge. DPP continued to operate the lagoons until late 1987 when sewer hookups were achieved.

or near the factory also have contributed to the excessive levels of hexavalent chromium.

In addition to preparing the quarterly groundwater monitoring reports, five purge wells were installed and a purge and treat system was operated by PPP until November of 1991.⁷

At that time, the state of Michigan took over operation of the system. The purge and treat system has stopped the spread of the contaminated plume of water in the aquifer and maintained it these past 14 years at a size of roughly 92 million gallons. The purge and treat system cost PPP roughly \$500,000.00 per year to operate.

II.

RCRA was enacted in 1976. On December 18, 1978, the United States Environmental Protection Agency ("U.S. EPA") promulgated proposed national standards for the location, design, operation, closure, and postclosure care of hazardous waste treatment, storage, or disposal facilities. At this time discharges were required from owner/operators to either design, construct, and/or operate of a regulated facility, like, the Richland facility. In May of 1980, U.S. EPA promulgated regulations which implement a grandfathered permitting program for existing facilities which required the facilities to either obtain a

⁷The purge and treat system was state down by order of the state court from August 1980 through November 1987.

Defendant failed to timely file a motion for summary judgment.

Coverage was denied to Plaintiff for liability insurance.

However, Plaintiff filed a complaint for coverage on November 1987, and Plaintiff was granted coverage under a liability policy, or a certificate of title to the car. After Plaintiff filed a complaint for coverage, owner/operators had no choice but to obtain insurance coverage, covering Plaintiff's car, and Plaintiff had to pay Plaintiff's attorney fees.

In April of 1988, U.S. EPA sent Plaintiff rules requiring Plaintiff to determine what kind of insurance Plaintiff obtained such insurance. Plaintiff took steps to comply with the regulations.

The regulations state Plaintiff may not operate Plaintiff's vehicle unless Plaintiff has obtained insurance to cover Plaintiff's liability to other persons.

Insurance requirements for Plaintiff's vehicle to obtain insurance were to register Plaintiff's vehicle with Plaintiff's state and Plaintiff's state registration.

Owner/operators were given five alternative mechanisms for certifying Plaintiff's vehicle registration:

- 1) a trust fund;
- 2) a surety bond;
- 3) a closure letter of credit;
- 4) a closure insurance policy;
- and 5) a statement from and cooperation from Plaintiff.

Owner/operators were given five alternative mechanisms for certifying Plaintiff's vehicle registration:

- 1) a surety bond;
- 2) a closure insurance policy;
- 3) a closure letter of credit;
- 4) a closure insurance bond;
- and 5) a statement from and cooperation from Plaintiff.

In April of 1988, U.S. EPA required Plaintiff to July 7, 1982, Plaintiff failed to register Plaintiff's vehicle with Plaintiff's state and Plaintiff's state registration.

Plaintiff operated Plaintiff's vehicle to the Plaintiff's state and Plaintiff's state registration.

Plaintiff failed to timely file a motion for summary judgment for continued operation, Plaintiff violated "unlawful status" requirements of EPA and Plaintiff failed to continue operation of Plaintiff's vehicle for continued operation, or Plaintiff failed to timely file a motion for summary judgment.

The groundwater monitoring, financial assurance, and financial liability requirements are central to RCRA's objective of assuring safe disposal of hazardous wastes and paying for the closure of hazardous waste facilities through the resources of owner/operators. See 42 U.S.C. § 6902(a) (objectives of RCRA are to "promote the protection of health and the environment and to conserve valuable resources"). The groundwater monitoring requirement provides U.S. EPA with a vehicle for identifying the gravity and extent of any groundwater contamination. The financial assurances requirement provides a source of income for final closure of a regulated facility. The financial liability insurance requirement provides protection for any third parties injured as a result of pollution at an RCRA site.

RCRA was amended in 1984. A major goal of the amendments was to limit the interim status period of facilities such as the Richland facility. To that end, Congress provided that if owner/operators of an interim status facility could not certify full compliance with the financial responsibility and groundwater monitoring requirements of RCRA, the facility's interim status would be terminated. Owner/operators who did not comply with RCRA were required to cease operations of their hazardous waste facilities by November 8, 1985, and submit the facility's final closure plan no later than November 23, 1985.

Defendants did not comply with the RCRA amendments. They continued operation of the Richland facility's seepage lagoons until December 7, 1987. The U.S. EPA did not receive a copy of

the Richland facility's closure plan until May 20, 1986. To date, defendants have not complied with either the financial assurance or the financial liability requirements of RCRA.

Defendants did not submit an RCRA compliant groundwater monitoring plan until May 21, 1991, and to date they have failed to implement that plan.⁸ The Court finds that defendants were well aware of the various RCRA deadlines and they failed to meet those deadlines in violation of federal law.

Because the defendants continued to operate the Richland facility in violation of RCRA and failed to comply with the numerous RCRA regulations, the U.S. EPA initiated an administrative enforcement action. Judge Borsos, the state court judge overseeing the state consent judgment, attempted to have the administrative law judge handling the enforcement action defer to the state court consent judgment. Judge Borsos's concern was that the cleanup of the Richland facility needed to strike an "appropriate balance between the environment and the continued operation of the facility and the 400 jobs which the company provides to the community." Defendant's Exhibit A.41.⁹ By letter dated July 16, 1986, U.S. EPA seemed to be willing to accept the rate of sludge removal from the lagoons contained in

⁸For the purposes of the penalties portion of this trial, the Court will only consider violations of the groundwater monitoring requirement after January of 1991. It was at that time that defendants were first notified that plaintiffs were seeking penalties for noncompliance with this element of RCRA.

⁹Judge Borsos's concern is evident in a January 24, 1990, order in which PPP is instructed to "continue to operate its facility in Richland, Michigan to the fullest extent possible."

the state consent judgment (I.A., 120 cubic yards per month). Attempts to settle the matter and coordinate the state and federal enforcement actions proved fruitless though, and on March 4, 1987, U.S. EPA moved to dismiss the administrative action without prejudice to the commencement of a civil lawsuit in federal district court. This action was commenced on March 31, 1987.

Following this court's Order of Permanent Injunction, plaintiffs undertook a large scale cleanup operation of the Richland facility. Nevertheless, closure of the facility remains incomplete. The testimony at trial established that there is still some 200 cubic yards of sludge on the property. Likewise, Kenneth Maybrandt, defendants' environmental expert, estimated the total cost for the removal of the remaining sludge and contaminated soils at \$100,000 to \$500,000. In addition, he estimated the cost of certifying that closure was complete to be in excess of \$4.5 million cleaning up the Richland facility. Pursuant to the state consent judgment and this federal action, they have also cleaned \$500,000 per year operating the pump and treat system for the years that system was in operation.

Due to their failure to comply with EPA, defendant received a significant economic benefit. Plaintiffs' expert galvanized by defendants awarded \$1.4 million. For necessary re-

highly credible. The Court finds that the total defendants derived an economic benefit of at least \$1 million through their failure to timely comply with the statute. This figure takes into account the costs defendants would have incurred in operating the electroplating facility without violating RCRA as well as the value of the interest earned on money that was not invested in RCRA cleanup in 1985. The figure also discounts Coad's estimate to give the defendants every benefit of the doubt failure to timely comply with the statute. This figure takes into account the costs defendants would have incurred in

The main defense raised by the defendants for their failure to timely implement RCRA and its regulations is that at the time RCRA became effective, up until the present, defendants have not had the ability to pay for the costs of complying with the

statute. In this regard defendants contend that their RCRA became effective, up until the present, defendants have not alleged liability to pay should violate any penalty imposed by the Court at this time. The evidence of actual penalties imposed to date indicates a history to comply with RCRA and to pay a monetary penalty for their noncompliance.

III.

The main defense raised by the defendants for their failure to timely implement RCRA and its regulations is that at the time RCRA became effective, up until the present, defendants have not had the ability to pay for the costs of complying with the

contrary, however, that defendants have had and continue to have the financial ability to comply with RCRA and to pay a monetary penalty for their noncompliance.

At this disposal. Because these interest rates were in excess of 6% million in capital gains. During this time period Lenny had shown that he earned \$3 million in income and an additional \$1 million in capital gains. Specifically, in the time frame between 1985 and 1986, when the new standards became effective, Lenny's losses tax returns

the seepage lagoons and removal of the stockpiled and buried sludge at the Richland facility, Ladney chose to invest the money in speculative ventures including gas and oil exploration partnerships. Likewise, Ladney had available between \$2.1 and \$4 million worth of property he owned in Canada (the "Koore Township property"), which could have been liquidated to come up with the necessary funds for RCRA compliance. In addition, throughout the relevant time period, \$2.8 million in assets were channelled away from PPP into other DPM Group corporations. Finally, Ladney and the DPM Group made a \$1.85 million equity investment in a \$70 million polypropylene factory. The factory was sold three years later for \$115 million. Defendants' continued restraint in that property. Today PPP holds no assets. PPP owns a piece of property in Michigan City, Indiana, which is worth somewhere near \$1.4 million. Ladney still owns the Koore Township property. It was valued by the DPM Group at \$3.168 million in a 1989 annual report. Its present value is considered between \$1.4 and \$2.3 million. Although Ladney has pledged to sell this property to a society his sons respendability, he has reported the existing price for the land will be closer to \$17 million. In addition, Ladney owns a \$1.5 million home in Naples, Florida. He also owns three Universal Products Plantses factory and land which is valued at

\$1 million. He owns land in Alliance, Ohio, which is valued at \$1 to \$1.5 million. He receives an income from Social Security, a pension, and a salary from his ¹⁰ mixed partnership¹⁰ totalling about \$200,000 per year.

IV.

Defendants violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and the RCRA regulations, 40 C.F.R. Part 265, by discharging hazardous waste into unlined surface impoundments and by operating waste piles without an RCRA permit or RCRA interim status. They also failed to submit required closure and postclosure plans and commence and complete closure of the Richland facility within the time periods required by RCRA Section 3005(e) and 40 C.F.R. §§ 265.112 and 265.113. These RCRA violations in turn amounted to violations of Sections 6 and 22 of HSWA, Mich. Comp. Laws Ann. §§ 299.606 and 299.622, for the continued operation of an unlicensed hazardous waste storage and disposal facility.

Defendants have violated the terms of the Revised Order of Permanent Injunction by failing to complete soil removal and sludge excavation pursuant to the applicable closure schedules/technology. The partners will currently pay a gross license fee of at least \$175,000. It also has entered into a gross license of at least \$450,000 and \$500,000 to pay for patent infringement litigation fees. It will pay several years, likely has made significant capital investments, to mixed and various other mixed partnerships.

¹⁰Lathey is the 99 percent owner of two mixed partnerships which is engaged in the business of licensing a patent for "carnitine technology. The partners will currently pay a gross license of at least \$175,000. It also has entered into a gross license of at least \$450,000 and \$500,000 to pay for patent infringement litigation fees. It will pay several years, likely has made significant capital investments, to mixed and various other mixed partnerships.

failing to backfill, grade, and seed the excavated areas; failing to comply with the postclosure care requirements of RCRA and HWMRA; and failing to implement the MNR-approved groundwater monitoring system at the Richland facility. Defendants have failed to meet the requirements of the financial assurance regulations found at 40 C.F.R. §§ 265.143 and 265.145. They have also failed to comply with the financial liability coverage regulations of 40 C.F.R. § 265.147. Plaintiffs are entitled to injunctive relief to cure all of these deficiencies. 42 U.S.C. § 6928(a); United States EPA v. Environmental Waste Control, Inc., 917 F.2d 327, 332 (7th Cir. 1990), cited, quoted, 111 S. Ct. 1621 (1991).

Plaintiffs have suggested to the Court that they would be satisfied with a permanent injunction requiring defendants' full compliance with all terms of the approved closure plan, the postclosure care requirements of 40 C.F.R. Part 165, and the provision of financial assurance for closure and postclosure care. In addition, although they are entitled to an order requiring defendants to comply with the financial liability coverage requirements, plaintiffs only seek an order requiring defendants to exercise "best efforts" to obtain and maintain liability coverage required by 40 C.F.R. § 265.147. Accordingly, an order to that effect shall enter.

In fashioning the appropriate injunctive relief, the court is mindful that defendants are already in violation of an order of this court. The court is not going to undertake to micro-

manage the defendants' compliance with its injunctive orders.

Accordingly, defendants shall have ninety days from the date of this opinion to make themselves fully compliant with RCRA. At the expiration of ninety days, the State of Michigan shall certify to the Court whether the defendants are in full compliance. If the defendants have failed to comply within ninety days, the court will appoint a trustee recommended by the plaintiffs to operate the defendants' business and personal affairs and expeditiously liquidate whatever assets are necessary to provide funds for compliance. To that end, the plaintiffs are directed to prepare and submit a list of three recommended third-party trustees, along with their recommended trustees' qualifications, for this Court's review.

v.

The Resource Conservation and Recovery Act provides:

Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

49 U.S.C. § 6928(g). Measurement of the amount of a civil penalty is committed to the informed discretion of the Court. *United States v. ITT Continental Banking Corp.*, 420 U.S. 223, 230 n.6 (1975). Although RCRA does not specify what factors a court should consider in arriving at an appropriate penalty, the scope of the suggests that relevant considerations include the seriousness of the harm caused by defendants' violations, the scope of the violations, defendants' good faith in attempting to rectify the

violations, and the economic benefit accrued by defendants. See, e.g., United States EPA v. Environmental Waste Control, Inc., 710 F. Supp. 1172, 1242-5 (W.D. Ind. 1989), aff'd, 917 F.2d 327 (7th Cir. 1990), cert. denied, 111 S. Ct. 1621 (1991); United States v. F. & S. Brass and Bronze Works, Inc., 681 F. Supp. 314, 322-23 (D.S.C. 1988), aff'd in part, 865 F.2d 1261 (4th Cir. 1988). In exercising its discretion, the court is also mindfull that a major purpose of a penalty is to deter others from the same or similar conduct. E.g., United States v. Phelps Dodge Indus., Inc., 989 F. Supp. 1340, 1358 (S.D.N.Y. 1994).

Viewing all of the evidence in total, the court, in its discretion, believes that a penalty of \$1.5 million is appropriate in this case. The court finds that the harm posed by the violations is serious and the scope of the violations is extensive. Certain circumstances the defendants have found themselves in tend to mitigate the amount of the penalty. For instance, defendants complied in good faith with the state count action and have expended at least \$4.5 million in cleaning up the Rickland facility since 1986. They have spent an additional \$500,000 per year on a purge and treat system and remained in operation, at least in part, in the interest of the state court.

On the other hand, on numerous occasions defendants have purposefully thwarted the effectiveness of the statute.

Township presently has the largest fee an annual fee of roughly \$250,000 net undeposited fees in accounts to relate funds for the cleanup of the facility, e.g., by putting the more defendants have not made deposited fees in accounts to relate

They also have the right to penalize anyone by \$60,000 plus legal expenses due to the negligence or a willful penalty.

Finally, the court notes that defendants have failed to pay the penalty imposed.

Thus, it appears that the court does not believe that the necessary cost amounting to part, therefore, is no danger that the funds necessary for this court, a judge, the penalty is certainly large assesses which can be imposed to satisfy the requirements of defendants of roughly \$4.5 million. Defendants currently have cases, and financial resources will result in a cost to the as other ACRA owners/operators. Note, however, that \$1.5 has a significant defendant effect on these defendants as well as company which ACRA. Likewise, the penalty is substantial enough to defendants will not have been effected economically by failing to pay the penalty. A penalty of \$1.5 million assesses that the defendants must be able to company which the court, a injunction and of the penalty imposed, and the court, a concern that the economic benefit accrued by the defendants, the defendant effect the major factors affecting the court, a calculation are the relevant.

Based upon the findings in the court, a calculation to the extent they are found to be true, the court, a calculated mitigating factors which have necessarily funds are readily available. On balance, the court, which they lack the funds to pay for closure when it is clear that they are to be marketed value. They also have continued to conduct

Ladney's ex-wife paid the plaintiffs in settlement of their lawsuit against her arising out of these same circumstances.¹¹ Both of these arguments are without merit.

The Eighth Amendment to the United States Constitution bars the imposition of "excessive fines." As a general rule, however, civil penalties designed with both retributive and deterrent goals in mind are not unconstitutional. United States v. Halpern, 490 U.S. 435, 447-48 (1989). The civil penalty provision of RCRA is clearly intended to serve a deterrent purpose. Accordingly, there is no argument that it is per se unconstitutional. Likewise, the \$1.5 million assessed in this case can in no way be said to be excessive. This penalty is in line with those imposed in numerous other environmental cases. See, e.g., Public Interest Research Group, Inc. v. Powell Duffryn Terminals, Inc., 913 F.2d 64, 80-81 (3rd Cir. 1990), cert. denied, 111 S. Ct. 1018 (1991) (\$4.2 million penalty for violating Clean Water Act); T & S Brass Works, 681 F. Supp. at 322 (\$2.8 million penalty for RCRA violation).

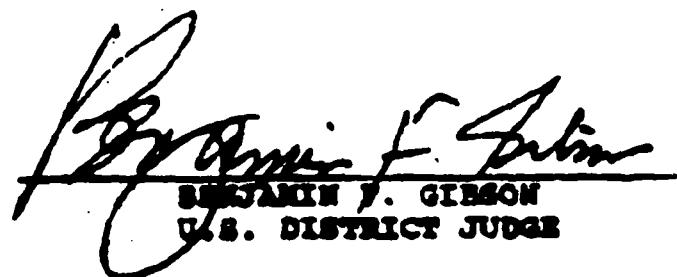
Mrs. Ladney was never adjudicated to be liable for the RCRA violations at issue in this action. Moreover, the Ladneys' judgment of divorce in the state court proceeding requires Ladney to hold her harmless for the pollution problem at the Richland facility. Judgment of Divorce at ¶ 49. The Court will not

¹¹Defendants also ask the Court to take this opportunity to reconsider its prior decision holding Ladney jointly and severally liable for the RCRA violations. The Court stands by its earlier ruling.

pro rata reduce defendants' penalty to account for Mrs. Ladney's settlement with the plaintiffs.

VI.

For the reasons stated above, Judgment shall enter in favor of plaintiffs and against defendants PPP, MCP, and Michael Ladney jointly and severally.



Benjamin F. Gibson
BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

DATED: September 4, 1992

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U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES et al.,

File No. K87-138 CR-10

Plaintiffs,

Hon. Benjamin F. Gibson

v.

PRODUCTION PLATED PLASTICS,
INC., et al.,

JUDGMENT

Defendants.

At a session of the Court held in and for said
District and Division in the City of Grand Rapids,
Michigan, this 4th day of September, 1992.

PRESENT: HON. BENJAMIN F. GIBSON, DISTRICT JUDGE

In accordance with the Opinion dated September 4, 1992,
IT IS HEREBY ORDERED that within ninety days of the entry of this
Judgment defendants shall achieve complete closure of the
Richland facility pursuant to all terms of the approved closure
plan, as referenced in the Revised Order of Permanent Injunction.

IT IS FURTHER ORDERED that upon completion of the closure of
the Richland facility, if defendants cannot achieve clean closure
of the surface impoundments, waste pile, and associated traffic -
loading areas, as required by RCRA, NRWMA, and the approved
closure plan, defendants shall comply with the postclosure care
requirements of 40 C.F.R. Part 265 and corresponding Michigan
regulations.

IT IS FURTHER ORDERED that within ninety days of the entry
of this Judgment defendants shall provide financial assurance in

accordance with 40 C.F.R. §§ 265.143 and 265.145 and corresponding state regulations. Pursuant to 40 C.F.R. § 265.143(h), the financial assurance mechanism for closure shall remain in place until defendants submit and receive approval of a certification that all hazardous waste management units at the Richland facility have been closed in accordance with the approved closure plan.

IT IS FURTHER ORDERED that within ninety days of the entry of this judgment the defendants shall provide financial assurance for the cost of postclosure care pursuant to 40 C.F.R. § 265.143. IT IS FURTHER ORDERED that within ninety days of the entry of this judgment, defendants shall implement and comply with the alternate groundwater monitoring program approved in April 1991, as referenced in the Revised Order of Permanent Injunction.

IT IS FURTHER ORDERED that defendants shall exercise their best efforts to obtain and maintain liability coverage required by 40 C.P.R. § 265.147 and corresponding Michigan regulations.

IT IS FURTHER ORDERED that within ninety days of the entry of this judgment and every 180 days subsequent thereto defendants shall provide to plaintiffs written certification of their good faith and best efforts to satisfy the requirements for liability coverage for sudden and non-sudden accidental occurrences. This requirement shall be in effect until defendants obtain and maintain the required liability coverage or are no longer required to maintain such coverage pursuant to 40 C.P.R.

§ 265.147(h), whichever occurs first. The certifications shall, at a minimum, include the following:

1. copies of each evaluation of each method for demonstrating the liability coverage required by 40 C.F.R. § 265.147 and corresponding Michigan regulations, including copies of each request or application for liability coverage under RCRA, by or on behalf of the defendants;
2. copies of all responses received to the requests or applications described above;
3. identification of the reasons for not obtaining the liability coverage for each method provided by 40 C.F.R. § 265.147;
4. a detailed description of measures taken and to be taken by defendants to meet any conditions for obtaining liability coverage; and
5. a statement by an authorized official that defendants exercised best efforts to obtain liability coverage required by 40 C.F.R. § 265.147.

IT IS FURTHER ORDERED that ninety days after the entry of this Judgment, plaintiff State of Michigan shall certify to this Court whether defendants are in compliance with the injunctive relief ordered by this Judgment.

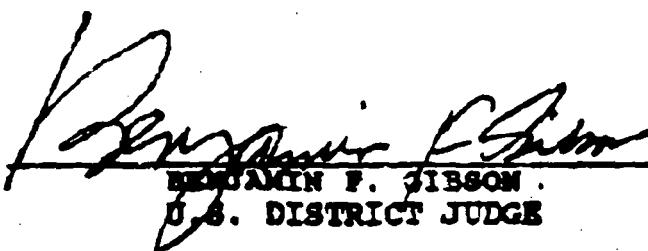
IT IS FURTHER ORDERED that plaintiffs shall submit to the Court a list of three recommended third-party trustees along with those persons' qualifications to serve as trustee.

IT IS FURTHER ORDERED that if plaintiff State of Michigan certifies to the Court that defendants are not in compliance with the injunctive relief ordered by this Judgment, the Court shall appoint a trustee from among the three recommended by the plaintiffs. That trustee shall have the authority to manage all of the business affairs of the defendants and will be instructed

to expeditiously liquidate whatever assets are needed to achieve compliance with the Court's injunction.

IT IS FURTHER ORDERED that defendants shall pay to plaintiffs a civil penalty in the amount of \$1.5 million.

IT IS SO ORDERED.



A handwritten signature in black ink, appearing to read "Benjamin F. Gibson".

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE